

any other representative designated by the contracting officer) all disclosures of reportable items and subject inventions, interim reports, subcontract identification, and other information in the manner required by the clause, and upon the completion of the work under the contract or subcontract, the final report if required by the clause.

(2) Reporting of reportable items as required by the New Technology clause promptly and before the completion of contract work, and prompt submission of the final report upon completion of contract work, will aid new technology clearance. Timely submission of annual interim reports, where contracts cover a period of more than one year, will also facilitate clause administration and expedite final clearance.

[54 FR 28272, July 5, 1995, as amended at 60 FR 40515, Aug. 9, 1995]

#### **1827.375-3 Follow-up by Government.**

(a) The New Technology Representative shall review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting requirements. This effort should be directed primarily toward contracts and subcontracts that, by the nature of the work to be performed or the dollar amounts involved, are likely to produce reportable items or subject inventions of significant quantity or quality, or toward contracts and subcontracts under which there is reason to believe that the contractors may not be complying with contractual obligations. Other contracts and subcontracts should be spot-checked when feasible. These follow-up activities may include—

(1) Reviewing the contractor's technical reports;

(2) Requesting the Patent Representative to check sources for patents issued to the contractor in fields related to the contractor's Government contracts;

(3) Interviewing contractor personnel regarding work under the contract, observing the work on-site, and inspecting laboratory notebooks and other contractor records related to work under the contract, to the extent authorized by the clause;

(4) Interviewing agency technical personnel concerning novel developments in contracts under their cognizance; and

(5) Ensuring that the contractor is timely in reporting reportable items, disclosing subject inventions, and submitting interim reports, subcontract identification, and final reports as required by the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the report of the reportable item. The New Technology Representative shall consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract. All correspondence relating to:

(1) Inventions and waivers under the New Technology clause and

(2) Election of title under the Patent Rights—Retention by the Contractor (Short Form) clause

shall also be promptly forwarded to the Patent Representative.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the New Technology clause, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications,

(2) Make determinations of inventorship, and

(3) Ensure the preparation of instruments establishing the Government's rights.

The Patent Representative shall also, as necessary, conduct selected reviews of the nature set forth in paragraph (a) of this section to ensure that subject inventions are identified, adequately

documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel.

(e) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the New Technology clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the New Technology clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would:

(1) Constitute a final decision under the Disputes clause,

(2) Involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245.1, or

(3) Otherwise be outside the scope of the contract.

(f) If it is determined that a contractor or subcontractor does not clearly understand the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation should be conducted to explain these rights and obligations (see FAR subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on in-

ventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer or a representative may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see FAR 4.801(c)(3)).

(g) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence, as specified in paragraph (d) of this section.

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#### **1827.375-4 Conveyance of invention rights acquired by the Government.**

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227-70, New Technology, a determination of title is to be made in accordance with section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

(b) When the Government acquires the entire right to, title to, and interest in an invention other than pursuant to paragraph (a) of this section, FAR 27.305-4 shall apply.